

## **Attachment 1**

### **Response to Public Comments on AM--27-00**

The rule package, AM-27-00, received comments from approximately 65 companies, trade associations, local government units and organizations. The Department reviewed each specific comment and significantly revised and redrafted the proposed rule to respond to the comments. This document summarizes the contents of the comments received by subject area and summarizes the Department's responses.

#### **Legal Authority**

COMMENT: There were numerous assertions that the proposed rule goes beyond the legal requirements of the Clean Air Act (CAA).

RESPONSE: The proposed rule has been revised and focuses on those elements, which are federally required under the CAA. However, all of the elements of the proposed rule that went out for public hearing were legally supported either by the CAA, federal guidance or state authority as a means to demonstrate the state's attainment of the one-hour ozone standard.

COMMENT: Rate-of-progress controls are not required if modeling shows attainment.

RESPONSE: Rate-of-progress controls are required in the CAA for ozone nonattainment areas regardless of whether modeled attainment is demonstrated with emission reductions made outside of these areas. The proposed rule was revised to require rate-of-progress emission reductions in the 6 severe nonattainment counties, as well as Sheboygan and Manitowoc Counties, where violations of the standard have been monitored.

#### **Geographic Scope**

COMMENT: There should not be controls or requirements on sources in the maintenance and secondary ozone control regions because these regions do not contribute to the problem.

RESPONSE: Controls in these regions demonstrate an air quality benefit in the nonattainment counties. However, comments received made a strong case that the proposed controls on existing sources would affect numerous small sources and be a very staff-intensive effort. The revised rule limits the controls on existing sources to an 8-county ozone nonattainment area and does not identify secondary and maintenance ozone control regions. Based on the comments, DNR anticipates a strong commitment to significant voluntary NO<sub>x</sub> reduction efforts by some of the larger NO<sub>x</sub> emitters outside the 8-county area. Initiatives are being pursued in that regard through separate mechanisms.

### Excess Emission Fee

COMMENT: The excess emission fee is counterproductive and not required at this time.

RESPONSE: The Department has concerns about the potential effect of this fee on sources which have complied with all CAA regulations and will be addressing these concerns with EPA. However, the fee provision is required under the CAA and must be submitted with this attainment demonstration or the Plan as a whole may be deemed incomplete by EPA and will not be approved.

### NOx Offsets

COMMENT: The Department received extensive comments on the offset provisions in the proposed rule. The most frequent comments addressed the threshold for the offsets being too low with the resulting offset requirement on small sources constraining economic development and being an administrative burden for the DNR.

RESPONSE: There is no offset requirement in the revised rule. These comments, and those noted below, identified economic, administrative and timing issues that do not make the offset program practicable or cost-effective for this attainment demonstration.

COMMENT: Numerous comments noted that there is not a complete analysis on offset availability (e.g. – the viability of a NOx offset market in the near term) and that offsets take time to accrue and will not be available at the effective date of the rule.

RESPONSE: The Department concurred that the offsets need time to accrue. Tracking the offsets would also place extra demand on limited staff resources. The revised rule contains no offset requirement.

### Rate-of-Progress Requirements

COMMENT: The most frequent comment was that there is no need or rationale for additional rate-of-progress requirements in Wisconsin to attain the 1-hour ozone standard by 2007.

RESPONSE: The rate-of-progress emission reductions are required for ozone nonattainment areas under the CAA. The revised rule limits the requirements to 6 severe ozone nonattainment counties, as well as Sheboygan and Manitowoc Counties, where violations of the 1-hour standard have been monitored.

COMMENT: There were numerous comments suggesting that the geographic scope of the rate-of-progress reductions be limited to smaller groups of counties varying from four to nine counties in size and excluding the secondary ozone control and ozone maintenance regions.

RESPONSE: The revised rule limits the geographic scope of the rate-of-progress reductions to 8 counties. In addition, the revised rule includes rate-of-progress controls for only 48 emission units at 23 existing NOx facilities.

COMMENT: Several comments affirmed the need for rate-of-progress reductions in the attainment demonstration plan. One comment suggested that the rate-of-progress reductions were too small to be truly protective of public health. The plan does not address public health issues associated with the 8-hour ozone standard.

RESPONSE: The Department concurs that the rate-of-progress requirements are needed. The rate-of-progress reductions in the revised rule support the attainment of the 1-hour ozone standard, which will protect the public from the health effects of acute, high levels of ozone.

#### I/M Cutpoints as a part of Rate-of-Progress

COMMENT: There was substantial support for the enforcement of the nitrogen oxide (NO<sub>x</sub>) cutpoints for the Vehicle Inspection/Maintenance (I/M) program as a necessary component of the rate-of-progress controls. One comment qualified the support by requesting that the Department demonstrate legislative support and cost-effectiveness compared to other controls in the rule. One comment argued against using I/M cutpoints.

RESPONSE: The revised rule contains the enforcement of the I/M NO<sub>x</sub> cutpoints because the resulting emission reduction credits are achievable within the current program by the 2002 milestone, the NO<sub>x</sub> portion of the test is already conducted on most vehicles in the program (but not used for pass/fail) and the test reflects a reasonably cost-effective NO<sub>x</sub> control measure.

It would be difficult and expensive to replace the NO<sub>x</sub> credits associated with the cutpoints through a different control measure.

#### Contingency Provision

COMMENT: Remove the 3% contingency from rate-of-progress related limitations. Remove the 3% contingency from the “front end” of the control requirements.

RESPONSE: The 3% contingency provision is a requirement in the CAA and must be included in the rule for the attainment demonstration to be approved. The Department has addressed the 3% contingency from the “front end” by phasing in the emission rates annual for large utility units.

#### Performance Standards

COMMENT: The most frequent comments on the performance standards for existing sources under the proposed rule addressed the geographic scope of the rule, the threshold levels and the need for additional control cost analysis.

RESPONSE: The proposed rule contained numerous options for control programs on existing utilities and industrial sources. If all of the options were implemented, the proposed rule would have affected approximately 200 facilities. The revised rule sets a corporate average emission rate for five of the largest utility facilities and sets unit specific performance standards for potentially sixteen additional facilities in an eight county area. The geographic scope is more limited, the thresholds apply to larger facilities and the control cost analyses concerns were addressed by the Department’s changes in the rule.

COMMENT: Numerous comments addressed technical and practical implementation issues, including monitoring and reporting requirements under the proposed rule, and areas of unclear rule language and definitions.

RESPONSE: Many of these issues were eliminated when the applicable thresholds increased and the number of affected facilities was reduced to 23 in the revised rule. The rule definitions have been revised and rule language has been redrafted to address the remaining practical implementation issues.

COMMENT: Numerous comments were received on the new performance standards in the proposed rule. Some comments strictly opposed performance standards on new sources and others opposed the standards in the secondary and maintenance regions. A substantial number of comments did not oppose the standards for new sources but addressed technical issues to make the program more feasible.

RESPONSE: The Department used the technical comments as a basis for modifying the standards for new sources. The new source standards in the revised rule are based on low NOx technology that is available.

COMMENT: Create a voluntary program to get emission reductions.

RESPONSE: The Department will develop a voluntary program for implementing optimization and tuning refinements statewide for emission reductions as a complement to the revised rule's limited geographic scope.

#### Motor Vehicle Emission Budget

COMMENT: The Department received several comments relating to the motor vehicle emissions budget in the proposed rule. The comments recommended that the Department adopt the budget presented in public hearings on the proposed rule and requested further explanations.

RESPONSE: The Department revised the budget, as presented in the public hearings, and has provided further explanations to the requesting parties.

#### Public Health and Air Quality Objectives

COMMENT: The Department received several comments supporting its efforts to attain the one-hour standard with the proposed rule and one comment recommended the proposed rule should be more consistent with the objectives of the 8-hour ozone standard.

RESPONSE: The revised rule protects the public from the health effects of acute, high level ozone by demonstrating that the one-hour ozone standard will be attained. The revised rule does not include requirements to attain the 8-hour standard, but it is complementary to programs that could address that standard.

#### Rule Notice and Outreach Effort

COMMENT: The Department received several comments which requested additional time for comments and meaningful input on the proposed rule. The comments expressed concern about the scope of the proposed rule and the need to get information out statewide and to smaller sources that were affected.

RESPONSE: The revised rule is limited in scope and addresses many of the concerns raised about a perceived lack of notice statewide for smaller sources. The Department received approximately 75 comments, many of them extensive, which is a significant indicator that information did get out to affected parties. The Department has held informational meetings and public hearings, and has continued meeting with stakeholder advisory groups. The Department is also contacting and meeting with the 21 affected facilities and with local government entities that have expressed concern or surprise with their area being involved in this rule development effort. As the revised rule proceeds to the Natural Resources Board and through legislative review, the Department will continue meeting with advisory groups and providing updated information.

#### VOC RACT Rule

COMMENT: The Department received comments from affected sources on the proposed volatile organic compound (VOC) Reasonably Achievable Control Technology (RACT) emission limits. Several comments questioned the need and justification for the rule and questioned the use of California limits that have not been proven in practice.

RESPONSE: The VOC RACT rule is a CAA requirement and must be included for approval of the attainment demonstration. DNR has worked with industry to make the rule address Wisconsin's industrial mix and will stay apprised of any changes to California's standards which could have an impact on Wisconsin sources.

COMMENT: Additional comments addressed implementation and compliance costs and concerns about the use of exempt solvents, options for solvent substitutions and safety concerns with certain solvents. Several comments made suggestions for definition revision and rule language clarification.

RESPONSE: The revised rule contains a section to address an alternative compliance option using certain cleaning materials. The revised rule also has higher VOC limits for some of the problematic applications. The revised rule does not mandate the use of any particular exempt compounds and does not anticipate an increase in hazardous waste generation under the rule. Definition and language clarifications have been incorporated.

### Air Quality Modeling

COMMENT: The Department received several comments related to the air quality modeling for the attainment demonstration. Comments raised concerns with the zero-out technique applied to the secondary control region and the trajectory analysis. One commentor also used the CAMx model to demonstrate the lack of culpability to high ozone concentrations from emissions in the secondary control region.

RESPONSE: The Department prepared comments to support the use of the zero-out technique and to qualify how the results were used. The Department also explained that the trajectory analyses were not used as absolute measures, but as relative measures. The Department expressed its concerns about CAMx model limitations and why it was not used.

### Small Business and Fiscal Analyses

COMMENT: The Department received comments from industry stakeholder groups, large industries and local government regarding the potential small business impact associated with the proposed offset structure, especially in regard to the low proposed threshold (1 ton per year potential-to-emit) for new NOx sources locating in the state.

RESPONSE: The final plan includes no offset provision. The Department had selected the 1 ton threshold as a place-holder for the menu-of-options draft. This had been communicated with the advisory groups.

COMMENT: The Department received additional, related comments that the potential fiscal impact of the offset and new source provisions on small governmental entities installing boilers for large public facilities and related equipment.

RESPONSE: The final rule contains no offset provision, at any threshold, and the new source NOx emission limit standards are set to threshold levels likely to impact larger entities.

### Environmental Impact Review

COMMENT: The Department received comments suggesting that the rules represent a Type II rather than Type III action and therefore require a more extensive environmental analysis than provided in the draft rule package.

RESPONSE: Adoption of the proposed rules represents a Type III action under DNR's rules.